

Our Despotic Postal Censorship

By **LOUIS F. POST**

Editor of **THE PUBLIC**

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POSTAL CENSORSHIP OF BANKING

The Lewis case of St. Louis (p. 778) is a striking instance of the dangerous meddlesomeness of the postal department in private business. Lewis had undertaken to establish a banking business with certain novel features. Whether those features would be useful or not we make no pretense of saying. We are quite convinced, however, that post office "inspec-

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tors" (the official name for mail bag detectives) are not qualified judges; and we doubt the competency of a Postmaster General who collected campaign contributions from financial corporations to be used for his chief's election. Yet this Postmaster General, upon the ex parte report of such detectives, did by arbitrary order close the mails to Lewis's banking enterprise. Of course that meant death to the enterprise, for mail facilities are vital to every modern business. The pretense was that the business was fraudulent. But this pretense has been killed by the report of the receiver of the assassinated enterprise, who says of it that every loan and investment has been liquidated 100 cents on the dollar with interest in full; that the depositors are being paid in full; and that he has already declared dividends to the stockholders of 85 per cent. If that was a fraudulent institution, making loans on wildcat securities, what shall be said of the honest ones whose securities do not pan out in full, whose depositors get but a fraction of their money back, and whose stockholders are lucky if they don't have to submit to an

assessment? Besides this evidence of the legitimacy of Mr. Lewis's assassinated business, we have the signed statement of Alexander Del Mar, the distinguished publicist who is editor of the American Banker, that he is satisfied after minute examination that the banking business in question—

however original its method of promotion, or however novel its features and plan of working, was an honestly designed, and an honestly conducted institution and one which, had it not been disturbed, would have proved profitable to its stockholders and depositors and even beneficial to the country at large, by increasing the revenues of the post office department, providing a safe and expenseless money order system and affording facilities to the multitude for obtaining small loans of money upon pledges. I am constrained to add that the dates and other details of the attacks made upon it by the several parties indicated point to a concerted effort, originating in trade rivalry and embittered by malice.

The fact that such a business could be ruined by the fiat of a cabinet officer is reason enough for overhauling the statutes under which an administrative department of the central government has drawn to itself such monstrous power.

POSTAL CENSORSHIP OF PERIODICALS.

We recur with much reluctance to the despotic censorship which is growing up in the Post Office Department (p. 420), under cover of well-meant Congressional legislation for the suppression of vice and fraud. The subject cannot be neglected while that crude and careless legislation remains upon the statute books unamended. For this censorship, already destructive of some of the legitimate postal rights of some persons, is becoming more and more expansive in scope and despotic in execution.

The particular instance regarding which we are about to submit the facts, relates, as did a previous one (p. 290), to the Chicago periodical known as "Lucifer," which the Post Office Department is endeavoring to suppress on the manifestly false pretense that it is an obscene publication. On the same pretense and by the same influence, the editor, Mr. Moses Harman, has been imprisoned (p. 806) through the machinery of the Federal courts.

Lucifer is devoted in good faith to the propagation of its editor's opinions regarding sex relation-

ships. Although these opinions are contrary to ours, we conceive that they may nevertheless be entitled to respectful consideration, and we therefore demand for them the same freedom of expression that we enjoy for our own. They are, indeed, hostile to the perpetuation of certain ecclesiastical and social conventionalities, but only a false witness or a moral pervert would deliberately pronounce them obscene. The product of a philosophical and not a salacious mind, they present for rational thought questions of human welfare which demand uncensored expression.

But the vital question presented by the particular circumstances to be here considered, is not whether "Lucifer's" opinions and ours, or its opinions and anybody else's, are at variance. It is not whether one kind of opinion or another shall be suppressed. It is not whether obscenity shall be excluded from the mails, nor even whether "Lucifer" is actually guilty of obscene utterances. The vital question to the American people in this and all similar cases, is whether any person shall, upon any pretense whatever, be deprived of his liberty or his property, so far as either depends upon the use of the mails, without a fair

trial and in accordance with public law and unconcealed precedents. It is the old question of "administrative process" in a new form.

That the right to use the mails depends, under the act of Congress as it now exists, upon the mere whim of administrative officers we have already proved. We purpose now to confirm that proof with additional evidence. At the same time we shall demonstrate specifically the following assertions:

1. Any periodical, though it contains nothing obscene, is subject to exclusion peremptorily from the mails as a purveyor of obscenity, upon the mere order of administrative officials of the Post Office Department.

2. Exclusion orders are made ostensibly in accordance with precedents of the Department created by rulings in particular cases upon what constitutes obscenity; but these precedents are secret, and by refusing to define their limitations upon request the Department prevents publishers from guarding against the penalties of orders of exclusion.

3. Publishers whose periodicals are so excluded are accorded no protection by the courts against unjust exclusions, not even though the exclusion be made in manifest bad faith. As the law stands, the Postmaster General's dictum, right or wrong, and whether with

good intent or evil intent, is absolute.

4. In practice the Post Office Department excludes periodicals from the mails for publishing articles denounced as obscene, which in fact are not obscene.

5. The law as it now stands affords officials of the Post Office Department a degree of opportunity for corrupt discrimination in excluding periodicals, which it is unsafe to repose in any official and which ought to be carefully guarded against by Congress.

I

About the middle of August last, we were advised that the issue of "Lucifer" of August 3 had been excluded from the mails by postal order. According to our information, the matter specified as objectionable was in a paragraph of each of two indicated articles.

The first of these paragraphs was clearly not obnoxious to the law, unless President Roosevelt's observations on race suicide were obnoxious to it; the second was no more so, unless a book it named by title is on the postal index expurgatorius. We should have no hesitation in republishing both paragraphs for the purpose of showing their innocence, were it not for the fact that the Post

Office Department has them now on its index expurgatorius. This fact alone, were we to republish them here, would subject this issue of The Public to the risk of exclusion from the mails by order of the Post Office Department, and without possibility of protection from the courts.

Upon examining the articles in question we wrote, August 12, 1905, to the Chicago postmaster as follows:

Mr. Moses Harman, the publisher of "Lucifer the Light Bearer," which is entered at the Chicago post office, writes us to the effect that his issue of August 3d was submitted to your office for mailing; that your office advised that the first two articles of the issue were unmailable under section 497 of the Postal Laws and Regulations; and that the question is now before the Department at Washington awaiting its decision, the issue of Lucifer for August 3d being meanwhile practically denied circulation through the mails.

The first article he indicates is signed . . . and the second purports to be an extract from an article in the . . . by . . .* I have read the articles with a good deal of care, and fail to find in them anything that can possibly, either in thought or phrase, fall within what I should sup-

* Name omitted for reasons stated in the next note.

pose would be considered a fair interpretation of the section of the Postal Laws and Regulations referred to above.

If the articles were in harmony with my own views, I should never think of refusing them admission to my columns, although I am extremely careful, entirely apart from any consideration of the postal laws and regulations, to avoid giving offense with reference to the general subject with which these articles are allied. I can see no reason whatever for refusing them admission to any publication on any other ground than that, as in my case, they are out of harmony with its editorial policy. I am therefore constrained to believe that there must be some mistake or misunderstanding. It does not seem to me possible that your office would take the action which the publisher of Lucifer tells me has been taken respecting these articles.

May I therefore respectfully ask you to inform me of the facts so far as your office is concerned?

The reply of the Chicago postmaster, promptly made and bearing the date of August 14, was as follows:

Replying to yours of August 12, concerning the publication "Lucifer," the issue of August 3 contains obscene literature, judged by the precedent set by the Department at Washington in its rulings on this publication. The alleged objectionable matter is found

in the . . . paragraph,* beginning . . .
in the . . . column of page . . . also
in the . . . paragraph from the bottom
of the same column, beginning . . .
In this paragraph a pamphlet is ad-
vertised which contains obscene mat-
ter.

If the matter is not obscene in the
meaning of the law, the ruling of the
Department at Washington will ren-
der the matter mailable, and no dam-
age will result to the publication.

There has been no misunderstanding
on the part of this office in its action
on this issue of the publication. This
action is entirely within the Depart-
mental instructions, and so far in the
history of this publication the action
of this office has been upheld by the
Department.

The paragraphs specified in the
postmaster's letter, the specific
reference to which we omit for
reasons explained in the footnote,
were the same paragraphs as those
to which our attention had been
originally called. The second one
was held to be objectionable only

* We omit the specific references made in
the Postmaster's letter, because their
inclusion here might subject this is-
sue of The Public to suppression by
order of the postal censor. The same
act of Congress by authority of which
"Lucifer" was censored for publish-
ing those articles, provides also that "no-
tice of any kind giving information, direct-
ly or indirectly, where or how, or of whom
or by what means an "obscene . . . pub-
lication of an indecent character" "may be
obtained," is itself "non-mailable matter."

because it named a book which is on the postal index expurgatorius.

This letter from the Chicago postmaster throws some light on the indifference of the postal authorities to personal rights. "If the matter is not obscene," calmly writes the Chicago postmaster (doubtless by the hand of a bureaucratic subordinate), "the ruling of the Department at Washington will render the matterailable, and no damage will result to the publication." No damage will result to the publication! A whole issue of a publication may be stopped while a bureau at Washington leisurely considers whether it contains obscenity, and if the bureau's decision is favorable, "no damage will result to the publication"! This discloses a queer notion of the nature of newspaper property. However, as to our inquiry the Chicago postmaster's letter was as specific as

Since the censors have already decided that the articles in question are obscene and indecent, they might decide that the naming of them by title and page in connection with the name of the publication in which they appeared, is a notice making the paper publishing it also guilty under the statute and therefore subject to suppression. Were they to so decide, they could suppress this issue of *The Public*, and we should be without protection or redress or any power to get a judicial trial.

could be required; and we awaited the final action of the Department upon the postmaster's order of exclusion.

Meanwhile the Chicago postmaster had found it necessary, in accordance with the precedents of the Department, to exclude also the issue of "Lucifer" of August 17th.

In this instance the accusation, as reported to us, was plainly imaginary. It rested in part upon the republication of an editorial from the Woman's Journal, of Boston, the national woman suffrage organ, and one of the purest and most reputable periodicals in the United States, and in part upon an extract from an official report of the Agricultural Department of the United States government.

We thereupon wrote this letter, dated August 26th, to the Chicago postmaster:

Thank you for your prompt, courteous and full reply of August 14th to mine of August 12th, in which I had inquired relative to denial of mail service to the edition of the paper Lucifer of August 3d.

In one respect you misunderstood me. It was not my intention to imply that your office is acting recklessly with reference to the policy of the De-

partment, or contrary to Departmental instructions. I was only seeking information as to the policy, rulings and instructions of the Department as applied by you in a particular case.

And now I must trouble you again in the same way. I am informed that the issue of Lucifer, of August 17th, also has been refused mail service, and that the refusal is based on the charge that an article reproduced in it from the Woman's Journal, of Boston, and written by one of the editors of that paper, Alice Stone Blackwell, is unmailable under section 497 of Postal Laws and Regulations. As the Woman's Journal is the principal journalistic representative of the woman suffrage movement in the United States, and is everywhere respected as a pure and able publication, and Miss Blackwell is a woman of national reputation with a stainless character, this action of your office is of peculiar importance and of exceptional public concern.

The matter also concerns me personally, for in entire good faith, I also have reproduced an extract from Miss Blackwell's article. Whether the part I have reproduced includes any of the article to which you are said to object, I cannot positively know until I learn definitely from you the particular part or parts of that article (the whole and every part of which seem to me a thoroughly clean and just criticism of the present postal administration) to which postal objection is made and for the republication of

which the mail service is denied to Lucifer of August 17,—if such service has been denied on account of anything contained in Miss Blackwell's article.

Both for my own guidance, therefore, and also for legitimate public use, will you kindly indicate to me specifically, in such way as you think proper, what are the grounds for the exclusion from the mails of the edition of Lucifer of August 17th.

The postmaster's reply, bearing date of August 29th, was as follows:

Replying to yours of August 26, three pounds of the publication "Lucifer," of the issue of August 17, were offered for mailing at this office, and the copies are held, awaiting decision by the Department at Washington as to whether or not they are mailable under Sec. 497, P. L. & R.

The matter to which the attention of the Department has been especially drawn by this office is the article at the head of the . . . column of page . . . , and the . . . lines at the . . . of the . . . column of page . . .*

Judging by precedent, this matter is in violation of Sec. 497, and under postal instructions it is the duty of this office to submit the matter to the Department at Washington for a ruling.

Owing to the indefiniteness of this letter from the Postmaster,

* Indicating the articles containing quotation from U. S. Agricultural Report and two lines of the Woman's Journal article.

we made the following further inquiry, in a letter to him bearing date of August 30th:

Thank you for your reply of the 29th to mine of 26th, *in re* issue of Lucifer of August 17th.

You say that "the attention of the Department has been especially drawn" by your office to "the article at the . . . of the . . . column of page . . . , and the . . . lines at the . . . of the . . . column of page . . ." As you qualify your statement by the word "especially," may I further ask whether you acted also on any other part of the article on page . . . , or on any other article in the issue in question?

And if it would be proper for you to give it, I should like the following additional information regarding the objectionability of the article at the head of the . . . column of page . . . :

1. Does the objection apply to the use of the title of Dr. —'s book in the . . . line of the text of that article?

2. Does it apply to the language of the comparison between mankind and horse kind in lines . . . , . . . and . . . of the text of the article?

3. Does it apply to the quotation in line . . . of the text of the article, purporting to be from page . . . of a "Special Report on Diseases of the Horse" prepared under the direction of Dr. D. E. Salmon, and issued by the Bureau of Animal Industry in the United States Department of Agriculture?

4. Does it apply to the quotation in lines . . . and . . . of the text of the article in question, purporting to be from the text of the above described report of the Agricultural department?

5. Does it apply to the use of the title of Dr. ——'s book in the . . . line of the text of the article in question?

Noting what you say to the effect that the articles in question are in violation of section 497 according to precedent, and that it is your duty under postal instructions to submit them to the Department for a ruling, I wish to assure you of my absolute confidence in your good faith and that of your office. Permit me also to apologize for presuming to interrogate you so minutely as I do in this letter. Believe me, I am far from desiring to annoy you, or your office, or the Department. But it seems to me of the utmost importance that editors and the reading public should know the extent of the limitations that the rulings of the Department are imposing upon editorial discussion, quotation, etc., and it is only to this end that I trouble you.*

Following was the Chicago postmaster's reply of September 1st to the foregoing letter:

Replying to yours of August 30, relative to the publication "Lucifer," I cannot answer your specific questions with a direct "yes" or "no." I see

* Specific references omitted for reasons stated in previous foot note.

no necessity for this office to explain its objection to this printed matter in the manner you have prescribed. The article in question may be "obscene," within the meaning of the law. That is for the Department at Washington to decide. To quote your statement, it may be "of the utmost importance that editors and the reading public should know the extent of the limitations that the rulings of the Department are imposing upon editorial discussion, quotations, etc," but it is not within the province of this office to interpret the law. That is the prerogative of the Department at Washington. This office can only refer you to the statutes and to the rulings of the Department in specific cases.

In answer to the first question of yours of August 30, all references to the book ". . ."* were marked in the copy sent to the Department by this office. These references are not necessarily objectionable. The quotation from the book may be.

Having been refused in the preceding letter the information we sought, and referred therein "to the rulings of the Department in specific cases," we addressed the Postmaster General the following letter dated September 6th:

Will you kindly examine the in-

* Name of book omitted for reasons heretofore given. The book mentioned in the Postmaster's letter is not the U. S. Agricultural Report, but Dr. —'s book entitled ". . . ."

closed correspondence between myself and the Postmaster at Chicago and, if in your judgment proper to do so, favor me with the information which the Chicago Postmaster does not regard it proper for his office to furnish?

To facilitate your examination of the inclosures, I describe them as follows:

1. My letter of August 26 asking (for legitimate public use) for a specification of the grounds for the Chicago Postmaster's exclusion from the mails of the edition of the Chicago periodical "Lucifer," of August 17, 1905.

2. The Postmaster's response of August 29, indicating the matter to which the attention of your Department was "especially drawn" by the Chicago post office as furnishing grounds for the exclusion.

3. My reply of August 30th, asking specific questions, with a view to ascertaining exactly, and all, the matter objected to in the edition of "Lucifer" in question, the Postmaster having qualified his response to my former letter with the word "especially," as you will observe by reference to the copy of his response inclosed.

4. The Postmaster's reply of September 1, stating that he sees no necessity for explaining his objection to the printed matter in question in the manner I have requested, and referring to your Department.

My specific requests of your Department are:

First, Whether the Chicago Postmaster, in denying mail service to the issue of Lucifer of August 17, noted as objectionable any other part or parts of that issue than the parts described by him in his letters to me of August 29 and September 1. If so, what part or parts?

Second. Whether the objections he noted applied to the issue of Lucifer in question, as indicated by any or all of those questions in my letter to him of August 30th, which are therein distinguished by the numerals 2, 3 and 4.

As I stated in my letter of August 30 to the Chicago Postmaster, it is no part of my purpose to annoy your Department, or any branch of it, with impertinent inquiries. I may add that I have no intention of soliciting any information that the general public have no right to know. But I shall be greatly obliged if your Department will give me the information solicited above, so far as it may be within the bounds of propriety, and, to save further inquiry from me, will be sufficiently specific with reference to any of my requests that you may think improper, as to assure me that the failure to reply is because they are improper and not because they are accidentally overlooked.

The reply to the foregoing letter was dated September 13, and came from the First Assistant Postmaster General, who wrote:

In reply to your letter of the 6th instant to the Postmaster General, you

are informed that this Department cannot undertake to specify in detail the objectionable matter appearing in the issue of the periodical, "Lucifer," of August 17, 1905, which caused the exclusion of that issue from the mails.

This reply was so obviously an attempt to evade responsibility, and so manifestly indicative of a disposition to censor the mails not only arbitrarily but secretly, that we renewed our inquiries. This seemed necessary in order to make sure that the foregoing letter was deliberately in execution of a policy of secret censorship instituted by the Department, and not merely the irresponsible act of a careless first assistant.

Our letter renewing our previous inquiries was also addressed to the Postmaster General. It bore date September 18, and as will be noticed from its reproduction below it sought the information on the special ground that the Department's decision had made a precedent, the limitations of which ought to be divulged upon application by persons likely to be affected by it in conducting their business:

I am in receipt of reply of the 13th by the First Assistant Postmaster General to my letter of inquiry of the 6th, in which the First Assistant Postmaster General advises me that your

"Department cannot undertake to specify in detail the objectionable matter appearing in the issue of the periodical 'Lucifer' of August 17, 1905, which caused the exclusion of that issue from the mails."

Since receiving that letter I am informed that your Department has sustained the Postmaster at Chicago in his exclusion of the issue of "Lucifer" of August 17, and that this has been done because in that issue it published an editorial article entitled ". . ." *and an article copied from the Woman's Journal, entitled ". . ." Inasmuch as the matter has been finally decided by your Department, and is no longer under advisement, I wish to ascertain the extent of your adjudication, for the purpose of understanding its effect as a precedent.

As to the article from the Woman's Journal, your adjudication is sufficiently specific in one respect, namely, the . . . lines at the top of the . . . column of page . . . of "Lucifer" of August 17, and as to that I have no questions to ask.

As to the other part of the same article, the matter about . . . way down the . . . column of page . . . of "Lucifer," which you have adjudicated to be objectionable, will you kindly inform me whether or not your adjudication rests only or at all upon the naming there of the title of a book?

* Titles of editorials are here omitted for precautionary reasons. See preceding footnotes.

I should also like to know, whether your adjudication as to the Woman's Journal article in "Lucifer" rests upon anything else than the naming of that book, and upon the . . . lines at the . . . of the . . . column of page . . .

Finally, as to the article in "Lucifer" entitled ". . ." it seems to me especially important, since the Postmaster at Chicago advises me that he acts in these questions upon the precedents your Department establishes, that I should know the full bearing of the precedent established with reference to this particular article. The article, as you will recall, mentions the title of a book, and quotes from an official report of the United States Department of Agriculture. Will you kindly inform me whether your adjudication as to this article rests upon the naming of the book, or the quotation from the Agricultural Department's report, or both?

Please understand me. I am not endeavoring to probe the mental processes whereby the conclusions of your Department were arrived at. All I am asking for is the extent of the conclusions themselves, in so far as they go to make a precedent.

• Regretting what seems to me to be the necessity for further troubling you in this matter, I am, etc.

The reply of the Department to the foregoing letter confirmed the indications of the First Assistant's letter of the 15th. It showed that arbitrary and secret censor-

ship is a deliberate policy of the Department; either that, or else that F. H. Hitchcock, First Assistant Postmaster General, deliberately misrepresented the Department. For the reply, signed by F. H. Hitchcock as First Assistant Postmaster General, and dated September 27th, was as follows:

Your letter of the 18th instant, addressed to the Postmaster General, has been referred to this office for reply. With reference to your questions relative to certain objectionable articles which appeared in the issue of the publication "Lucifer," of August 17th, you are informed that the position of the Department in the matter was stated in a letter to you bearing date of the 13th instant.

We invite attention to the bureaucratic superciliousness of this reply to proper questions respectfully asked. The Department refuses to answer further than by reference to its prior letter. In its prior letter it declined to "undertake to specify in detail the objectionable matter," etc. Now what had we asked? Observe the substance of our questions and the Department's reply:

Question: Did the Department's adjudication as to a certain part of a certain article "rest only or at all upon the naming there of the title of a book?"

Answer: The Department "cannot undertake to specify in detail the objectionable matter."

Question: Did the Department's adjudication as to the Woman's Journal article rest upon anything else than the name of a book and certain indicated lines?

Answer: The Department "cannot undertake to specify in detail the objectionable matter."

Question: One of the indicated articles "mentions the title of a book, and quotes from an official report of the United States Department of Agriculture. Will you kindly inform me whether your adjudication as to this article rests upon the naming of the book, or the quotation from the Agricultural Department's report, or both?"

Answer: The Department "cannot undertake to specify in detail the objectionable matter."

Soon after the foregoing correspondence, we learned of the censorship by the Post Office Department of a subsequent issue of "Lucifer," the issue of October 12th. According to a still later issue of Lucifer, the circumstances of this censorship were these: One of the articles in that issue

of Lucifer, to which the Post Office Department was understood to have objected, was merely a catalogue of books. Among the authors were John Stuart Mill, August Bebel and other thinkers of reputation; and none of them is apparently obscene unless every serious discussion of the philosophy and physiology of sex is to be considered as in that abhorrent category. The other article contains a quotation from the London Fortnightly Review, which includes one from Bernard Shaw's "Man and Superman," proposing pensions as a preventive of what President Roosevelt calls race suicide.

Upon learning of the suppression of this issue of Lucifer we addressed the following letter of inquiry to the Postmaster General, under date of October 20th:

I am informed that the Chicago postmaster has excluded from the mails the issue of the Chicago paper named "Lucifer," of October 12, 1905, and that the exclusion is based upon an article on page . . . * first and . . . columns, containing a descriptive catalogue of books, and upon an article on page . . . second column, containing a quotation from Bernard Shaw's "Man and Superman." I am also informed that your Department has sustained

* See preceding foot notes.

this action of the Chicago postmaster.

As your decision constitutes a precedent by which the Chicago postmaster, as he has informed me relative to your decisions in similar cases heretofore, will be governed in future cases, will you oblige me with the following information:

1. Has your Department decided that "Lucifer," of October 12, is unmailable, and if so, for what cause?

2. Is it because on page . . . that paper names and tells where to obtain any unmailable book or books?

3. Is it because of its quotation on page . . . from Bernard Shaw's "Man and Superman"?

4. If The Public in commenting upon this decision of your Department, were to reproduce the said catalogue of books, or the said quotation from Bernard Shaw's "Man and Superman," would the postmaster at Chicago be required to consider this decision of your Department in the "Lucifer" case as a precedent and accordingly to exclude that issue of The Public from the mails?

I make this request as responsible editor of The Public, for the purpose of ascertaining to what extent, under precedents made by your Department, I shall be at liberty, in criticising your decision in the "Lucifer" case, to state the facts, without subjecting The Public to exclusion from the mails by your Department.

To this inquiry we received the following response from the office

of the First Assistant Postmaster General:

I beg to acknowledge receipt of your letter of the 20th instant, to the Postmaster General, in reference to the publication "Lucifer."

In reply to your inquiry you are informed that the Postmaster at Chicago was instructed to decline to accept for mailing copies of "Lucifer," of the issue of October 12, 1905, for the reason that such number, which was submitted to the Department, contained matter of an obscene character.

As you were advised under date of the 13th ultimo in reference to an earlier issue of "Lucifer," it is not practicable for the Department to attempt to point out all the offensive passages upon which the exclusion of the issue from the mails was based, nor can the Department undertake to state what would or would not be unmailable, in advance of the matter being actually presented for transmission in the mails.

A reduction of this correspondence also to questions and answers produces the following rather remarkable result:

Question: Does the Department exclude the issue of the paper in question because it "names and tells where to obtain any unmailable book or books?"

Answer: "It is not practicable for the Department to attempt to point out all the offensive pas-

sages upon which the exclusion of the issue from the mails is based."

Question: Is it because of the quotation from Bernard Shaw's "Man and Superman"?

Answer: "It is not practicable for the Department to attempt to point out all the offensive passages upon which the exclusion of the issue from the mails is based."

Question: If The Public were "to reproduce the said catalogue of books, or the said quotation from Bernard Shaw's 'Man and Superman,' would the postmaster at Chicago be required to consider this decision as a precedent and accordingly to exclude that issue of The Public from the mails?"

Answer: The Department cannot undertake "to state what would or would not be unmailable in advance of the matter being actually presented for transmission in the mails."

Now, why was it impracticable for the Department to state whether or not the exclusion of Lucifer was because it printed the names and places for procuring certain books? The Department was not asked "to point out all offensive passages."

And why was it impracticable for the Department to state whether

or not the paper in question was excluded because of its quotation from "Man and Superman"? To do this it was not necessary "to point out all offensive passages."

Finally, why couldn't the Department undertake to inform us whether the postmaster at Chicago would be required to consider the decision in the Lucifer case as a precedent? What is the meaning of refusals by the Department to state in advance of mailing whether matter excluded from the mail when published by one periodical would be unmailable if published by another? This last question almost answers itself.

II

We have now proved our assertions. But that there may be no reasonable question of our having done so, let us summarize the assertions and the proof in support of them.

First. We have proved by the foregoing correspondence that any periodical is subject to exclusion from the mails as a purveyor of obscenity, upon the mere arbitrary order of administrative post office officials.

Second. We have proved, also by the foregoing correspondence, that exclusion orders are made by

the Post Office Department ostensibly in accordance with its own rulings as to what constitutes obscenity, and that these rulings, though treated as precedents by postmasters, are kept profoundly secret by the Department.

Third. We have proved by reference to a previous article on this general subject (p. 424), which is too lengthy to be reproduced here, that the courts hold decisions of the Postmaster General in these matters to be absolutely beyond the power of the judiciary to override or restrain, even though he decide without evidence and in manifest bad faith.

Fourth. We have proved by the above correspondence, supplemented now by the best testimony possible, in view of the necessity the Department imposes upon us of proving the negative of an issue on which it holds the affirmative and possesses all the affirmative evidence if there be any, that in practice the Department does exclude from the mails for obscenity periodicals which in fact are not obscene. The correspondence proves the first part of this contention, namely, that the Department excludes periodicals alleged to contain obscene articles. As to the second and essential part of the contention, namely, that

the articles are in fact not obscene, the Department refuses to indicate the decisive facts, which are within its own control and in the nature of things cannot be known to outsiders. The several articles indicated above by the Chicago postmaster as cause for exclusion are clearly not obscene. The fact that the Department refuses to particularize should raise a reasonable presumption that there is nothing which it can particularize. And in support of this presumption we now positively testify, after reading the excluded papers through, that they in fact contain no word, phrase or thought which can with any show of reason be characterized as obscene.

Five. It is not necessary to prove that these circumstances afford dangerous opportunities for corruption in the Post Office Department. When the law permits postal officials to exclude from the mails any periodical, arbitrarily in their own discretion, with no appeal to the courts, upon the bare pretense that they contain obscenity but without any requirement that the alleged obscenity be particularized with sufficient definiteness to permit of a judgment upon the good faith of

the exclusion, and when the Department passes upon the question not only arbitrarily but in secret, the opportunities for secret corruption are so enormous that only the corruptible official in the place for corrupting possibilities is necessary to produce a regime of corruption.

We submit, then, that we have established all that in this article we set out to prove. Any periodical may be peremptorily excluded from the mails as a purveyor of obscenity though it contain nothing obscene, and this upon the mere order of administrative postal officials; exclusion orders are made in alleged accordance with secret precedents, the limitations of which are withheld from publishers seeking to adapt their editorial rights to postal rulings; the courts declare themselves powerless to interfere, even though exclusions be made without evidence and in manifest bad faith; the Post Office Department does in fact in this arbitrary manner exclude from the mails as obscene, periodicals which in fact are not obscene. Therefore, as the law now stands, it affords a degree of opportunity for corrupt discrimination and oppression which it is unsafe to repose in any of-

ficial and which ought to be guarded against by Congress.

III

The remedy for this fungus growth upon the postal service, a service originally intended only for a national convenience but now turned into a national police system which operates through irresponsible "administrative process" and from a "star chamber" tribunal, lies with Congress.

Shall the right to mail service in the United States, now become a necessity of the common life, depend upon the caprice, the bigotry or the corruptibility of one man at the head of a Washington department or his subordinate at the head of a bureau?

That question is distinctly raised.

The courts have answered, Yes. What has Congress to say?



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